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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,521	08/19/2003	Rolf W. Reisgies	034664-0141	4464

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EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/643,521

Applicant(s)

REISGIES, ROLF W.

Examiner

Kimberly S Smith

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04/05/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 08/19/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the restriction in the reply filed on 04/05/04 is acknowledged. The traversal is on the ground(s) that that the combination as claimed requires all the particulars of the subcombination. This is not found persuasive because the combination merely requires a wheeled carriage and does not specify the type of wheel to be used. Further, the subcombination requires a hand operated jack connecting to each wheel or an air pressure operated piston-cylinder connected to each wheel which are not required within the combination. Regarding the restriction with regards to Groups III and I, the test for distinctness is whether either the process for using the product can be practiced with another materially different product of the product as claimed can be used in a materially different process of using that product can be shown. As the product can be used in a materially different process in that the modular milking parlor can be transported via fork lift and flat bed truck. As such, the inventions are shown to be distinct and the restriction is considered proper. Regarding the traversal of Groups II and I. As the method claim requires a modular milking parlor including a plurality of milking stations, the product of Group II is incapable of being used in the method as claimed and therefore are maintained as incapable of being used together. The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 04/05/04.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferris, US Patent 3,019,763 in view of White, 6,609,477.

Ferris discloses a modular milking parlor comprising a frame base, plurality of upright members, at least one longitudinal support member attached to the upright support members and a plurality of milking stations (as seen in the figures) including a means for raising and lowering the platform to the ground for lessening the climb of the cows to the unit. However, Ferris does not teach the wheels being adjustably mounted so as to raise and lower with respect to the carriage body. White teaches within the analogous art of animal related trailers means for adjustably mounting the wheels (via hydraulic operation) to raise and lower them with regards to the platform to reduce the climb for the animal to enter the trailer. Because these two structures for lowering and raising a platform to reduce the vertical distance required by the animal to enter the device were art-recognized equivalents at the time the invention was made, on of ordinary skill in the art would have found it obvious to substitute the hydraulic system taught by White for the jacking system disclosed by Ferris.

Regarding claim 13, Ferris as modified discloses the invention as claimed with the exception of the use of steel T-beams. It would have been an obvious matter of design choice to design the frame base with T-beams since the applicant has not disclosed that the T-beams solves

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any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the use of an I-beam or an L-beam. Further, Ferris as modified does not positively disclose the structure is made from steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 14, Ferris as modified discloses the use of holes in the frame base (60) with the exception of positively disclosing their positioning within the frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the holes in upright webs of the T-beams of the base, since it has been held that rearranging parts of an invention involves only routine skill in the art. As such, the frame may be connected to the wheeled carriage by the holes if so desired as it has been held that the recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Regarding claim 15, Ferris as modified discloses the frame base including a front longitudinal member and a back longitudinal member that are parallel to each other and wherein a plurality of lateral members extend between and are attached to the front and back longitudinal members.

Regarding claim 17, Ferris as modified discloses groups of milk hoses, vacuum lines and control lines extending from each of the milking stations together to a longitudinal end of the milking parlor

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5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ferris as modified as applied to claim 12 above, and further in view of van der Lely, US Patent 6,044,793.

Ferris as modified discloses the invention substantially as claimed including the structure containing all of the equipment needed for milking a animal. However, Ferris as modified does not disclose the milking station containing an automatic teat cup cluster detacher with a support arm for supporting a teat cup cluster. It would have been obvious to one having ordinary skill in the art to use an automatic teat cup cluster detacher with a support arm in conjunction with the milking parlor of Ferris as modified as it was known in the art at the time the invention was made to use an automated teat cup cluster as seen in van der Lely in conjunction with a milking parlor in order to milk a plurality of cows at one time.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Honegger, US 3,556,054.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515.

The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss

MICHAEL J. [unclear]
SUPERVISORY PATENT EXAMINER